

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

FILED
DATE: <u>11-16-10</u>
<u>448</u> O'Clock <u>9</u> .M.
JEANNE HICKS, CLERK
BY: <u>RHONDI HAGEN</u>
Deputy

DIVISION PRO TEM B

JEANNE HICKS, CLERK

HON. WARREN R. DARROW

BY: R. Hagen, Deputy Clerk

CASE NO. V1300CR201080049

DATE: November 16, 2010

TITLE:

COUNSEL:

STATE OF ARIZONA,

Yavapai County Attorney
Sheila Polk/Bill Hughes
(via OnBase),

(Plaintiff)

(For Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly
(via electronic mail)
(Co-Counsel for Defendant)

(Defendant)

Luis Li/Brad Brian /Truc Do/Miriam Seifter
MUNGER TOLLES & OLSON LLP
355 South Grand Avenue Thirty-Fifth Floor
Los Angeles, California 90071-1560,
(Co-Counsel for Defendant, *Pro Hac Vice*)

HEARING ON:

NATURE OF PROCEEDINGS

COURT REPORTER

ORAL ARGUMENT / EVIDENTIARY HEARING RE PENDING

Mina Hunt

MOTIONS – Final Day

START TIME: 9:02 a.m.

APPEARANCES:

Sheila Polk, Counsel for State
Kathy Durrer, Assistant to Counsel for State
Detective Ross Diskin, Case Agent
Tom Kelly, Co-Counsel for Defendant
Luis Li, Co-Counsel for Defendant
Truc Do, Co-Counsel for Defendant
Miriam Seifter, Co-Counsel for Defendant

Mark Rock, previously sworn, resumes the witness stand for further testimony. The witness is excused.

Counsel for State begins making an Offer of Proof.

Counsel for State moves the Court to withdraw Exhibit 8, the Grand Jury Transcript. Counsel requests the Court take judicial notice of the Grand Jury Transcript.

IT IS ORDERED withdrawing Exhibit 8.

Counsel Do addresses the Court regarding Defense's objection to the State making its Offer of Proof. Counsel Do objects to the Offer of Proof as evidence and to transcripts of witnesses and requests an opportunity to review the witness statements. Oral argument ensues.

The Court **finds** that this evidence is evidence the Court can consider, that the Offer of Proof is not required to be read in court, and that Defense Counsel must have an opportunity to review the form of the evidence.

Defense Counsel request additional time to provide rebuttal briefing regarding the Offer of Proof.

Exhibit 129 is offered and objected to by Defense Counsel.

Exhibits 93 through 120 are offered. There being an objection by Counsel for Defendant, **IT IS ORDERED** overruling the objection and Exhibits 93 through 120, inclusive, are admitted into evidence.

Exhibits 9, 10 and 11 are offered and admitted into evidence without objection. The Court states the only parts of these Exhibits that will be released are those parts previously ordered to be released. The other portions will remain sealed.

Exhibit 12 is offered. There being an objection by Counsel for Defendant, **IT IS ORDERED** overruling the objection and Exhibit 12 is admitted into evidence for purposes of this hearing. The Court **ORDERS** that Exhibit 12 shall be sealed.

Exhibit 15 is offered and admitted into evidence without objection.

Exhibit 128 is offered. There being an objection by Counsel for Defendant, **IT IS ORDERED** overruling the objection and Exhibit 128 is admitted into evidence.

Exhibit 121 is offered and admitted into evidence without objection.

The Court instructs Counsel for Defendant to review the Offer of Proof during the recess.

~~~Recess~~~

At 10:45 a.m. the hearing reconvenes with all previously appearing parties present.

The Court and Counsel revisit Exhibit 129, the State's Offer of Proof. Counsel for Defendant advises they have reviewed the Exhibit and object thereto. Argument ensues.

The Court will view the Offer of Proof as a factual bench memorandum or trial memorandum and will not treat attorney statements as evidence. Defense will have an opportunity to respond to the Offer of Proof. **IT IS ORDERED** accepting the Offer of Proof as a brief; not technically an exhibit.

At 10:52 a.m. the State rests.

Defense presents its case in chief.

Caron Wallace Wendt is sworn and testifies.

Exhibits 38, 39, 40, 43 and 44 are offered and admitted into evidence without objection.

The witness is admonished and excused for the noon recess and instructed to return at 1:30 p.m.

~~~Noon Recess~~~

At 1:36 p.m. the hearing reconvenes with all previously appearing parties present.

Caron Wallace Wendt resumes the witness stand for further testimony.

~~~Recess~~~

At 3:22 p.m. the hearing reconvenes with all previously appearing parties present.

Caron Wallace Wendt resumes the witness stand for further testimony.

The witness is excused.

Exhibits 124, 125, 126, 131 and 132 are offered and admitted into evidence without objection.

Counsel Li moves to strike descriptive language contained in the Exhibit List and descriptive stickers on the backs of Exhibits 27, 28, 29, and 31. The Court notes the objection and advises that the evidence is weak as to the exact time of the photographs and will not be considered as evidence.

The Defense rests.

**IT IS ORDERED** taking the Rule 404(B) Motion under advisement.

**IT IS ORDERED** that Defense Counsel submit a response to the Offer of Proof to the Court no later than November 30, 2010.

Defense Counsel requests oral argument on the motion. Both Counsel shall contact the Court's Judicial Assistant regarding scheduling a date and time for oral argument.

Motion in Limine Re Financially Related Information

Counsel present oral argument.

**IT IS ORDERED** taking the Motion under advisement.

Motion in Limine Re Autopsy Photographs

Counsel present oral argument.

The Court holds ruling in abeyance for an opportunity for the Court to review the proposed photographs and consider the relation to specific testimony of the medical examiners.

Counsel agree to waiting to hold oral argument on the Motion in Limine re Pretrial Issues to a later date.

Counsel Kelly requests a two or three day hearing to resolve remaining pretrial issues with a briefing schedule prior to that hearing.

The Court advises Counsel a a Motions Deadline has been set for January 18, 2011 which may no longer work.

Defense Counsel advises they intend to waive Defendant's appearance for any future telephonic hearings.

Counsel Kelly advises the Court of an issue regarding discovery and requests permission to issue a Subpoena Duces Tecum to Angel Valley and to victims. Oral argument ensues. The Court **finds** that the information is discoverable but that it is not necessarily appropriate to go right to a subpoena. The Court directs the parties to confer regarding discovery issues and submit motions if need be.

The Court directs Counsel to review an initial draft of a Juror Questionnaire to be addressed at a later hearing.

The Court has requested oral argument regarding obtaining notes of interviews with experts. The Court had begun preparation of a written ruling. The Court notes that in dealing with experts, neither side wants to be in a situation where, in initial discussions with experts, it is a point where what the expert is saying is a discoverable statement. This issue is confined just to expert witnesses. Counsel Li advises the Court they are still seeking disclosure. Oral argument ensues regarding discoverability of expert witness notes, attorney notes regarding expert witnesses and reports of expert witnesses. Counsel are advised that experts must do their work and information must be exchanged timely. The Court will issue a written ruling regarding this issue.

**IT IS ORDERED** releasing unadmitted exhibits to the submitting party in open court.

**END TIME:** 4:48 p.m.

**THEREAFTER, off the record**, the Motion in Limine regarding Autopsy Photographs is NOT under advisement. The Rule 404(b) Motion is NOT under advisement as further oral argument is requested.

**FURTHER**, the Clerk is directed to file the State's Offer of Proof.

**FURTHER**, the Minute Entries dated November 9 and 10, 2010 are amended to reflect "personal" appearances of the participants instead of "telephonic" appearances.

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)  
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Division PTB (e) (Under Advisement w/File w/Exhibits)

Victim Services (e)  
Court Administration  
Jeanne Hicks, Clerk of Court  
Customer Service Supervisor, Verde  
Exhibit Clerk